11.501 Policy.

(a) The *contracting officer must* consider the potential impact on *pricing*, competition, and contract administration before using a liquidated damages clause. Use liquidated damages clauses only when-

(1) The time of delivery or timely performance is so important that the Government *may* reasonably expect to suffer damage if the delivery or performance is delinquent; and

(2) The extent or amount of such damage would be difficult or impossible to estimate accurately or prove.

(b) Liquidated damages are not punitive and are not negative performance incentives (see 16.402-2). Liquidated damages are used to compensate the Government for probable damages. Therefore, the liquidated damages rate *must* be a reasonable forecast of just compensation for the harm that is caused by late delivery or untimely performance of the particular contract. Use a maximum amount or a maximum period for assessing liquidated damages if these limits reflect the maximum probable damage to the Government. Also, the *contracting officer may* use more than one liquidated damages rate when the *contracting officer* expects the probable damage to the Government to change over the contract period of performance.

(c) The *contracting officer must* take all reasonable steps to mitigate liquidated damages. If the contract contains a liquidated damages clause and the *contracting officer* is considering terminating the contract for default, the *contracting officer should* seek expeditiously to obtain performance by the contractor or terminate the contract and repurchase (see subpart 49.4). Prompt *contracting officer* action will prevent excessive loss to defaulting contractors and protect the interests of the Government.

(d) The *head of the agency may* reduce or waive the amount of liquidated damages assessed under a contract, if the Commissioner, Financial Management Service, or designee approves (see Treasury Order 145-10).

Parent topic: Subpart 11.5 - Liquidated Damages